



2009 ASSEMBLY BILL 709

February 9, 2010 - Introduced by Representatives VAN ROY, SOLETSKI, TOWNSEND, BERCEAU, MONTGOMERY, SPANBAUER, KNODL, VOS, A. OTT, BROOKS, TURNER, PASCH, ZIGMUNT, ROYS, JORGENSEN, SMITH and A. WILLIAMS, cosponsored by Senators LEHMAN, HANSEN, TAYLOR, COGGS and PLALE. Referred to Committee on Jobs, the Economy and Small Business.

1 **AN ACT** *to create* 146.29 and 895.512 of the statutes; **relating to:** requiring
2 access to toilet facilities in a retail establishment, immunity from civil liability
3 related to use of the toilet facilities, and providing penalties.

Analysis by the Legislative Reference Bureau

This bill requires a retail establishment that has a toilet facility that is designated for use by employees to allow a person who has a certain type of medical condition, or who uses an ostomy device, to use the employees' toilet facility under certain conditions. The conditions are that the person has either a written statement from a physician indicating that the person has an eligible medical condition or uses an ostomy device, or the person has an identification card issued by an entity that is approved by the Department of Health Services to issue such cards; the person requests use of the toilet facility during normal business hours and while at least three employees are working; the toilet facility is not located in an area where access by the person creates a health or safety risk to the person or a security risk for the retail establishment; and the retail establishment does not have a toilet facility that is open to the public and no public bathroom is immediately accessible to the person.

Under the bill, a person who violates the requirement to allow access to an employees' toilet facility is subject to a civil forfeiture. In addition, a person who forges, alters, transfers, or possesses a forged or altered physicians' statement or identification card indicating that a person has an eligible medical condition or uses an ostomy device is subject to a civil forfeiture. Finally, under the bill, a retail establishment and its employees are immune from civil liability for the death of or

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injury to persons who use an employees' toilet facility in accordance with the access provision created in the bill.

The people of the state of Wisconsin, represented in senate and assembly, do enact as follows:

1 **SECTION 1.** 146.29 of the statutes is created to read:

2 **146.29 Access to toilet facility in retail establishment. (1) DEFINITIONS.**

3 In this section:

4 (a) “Eligible medical condition” means inflammatory bowel disease, irritable
5 bowel syndrome, or any other medical condition that periodically requires
6 immediate access to a toilet facility.

7 (b) “Inflammatory bowel disease” means Crohn’s disease or ulcerative colitis.

8 (c) “Ostomy device” means a medical device that creates an artificial passage
9 for elimination of body waste.

10 (d) “Physician” has the meaning given in s. 448.01 (5).

11 (e) “Retail establishment” means a store or shop in which retail sales is the
12 principal business conducted, except that “retail establishment” does not include a
13 motor vehicle fuel retailer’s establishment that is a structure that is 800 square feet
14 or less in size.

15 **(2) ACCESS TO TOILET FACILITY REQUIRED.** A retail establishment that has a toilet
16 facility that is designated for use by the establishment’s employees shall permit a
17 person who suffers from an eligible medical condition or uses an ostomy device to use
18 the toilet facility if all of the following apply:

19 (a) The person provides the retail establishment any of the following:

20 1. A copy of a written statement, signed and issued by a physician on the
21 physician’s letterhead or that of the facility with which the physician is associated,

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1 that indicates that the person suffers from an eligible medical condition or uses an
2 ostomy device.

3 2. An identification card issued by an entity approved by the department under
4 sub. (4) that indicates that the person suffers from an eligible medical condition or
5 uses an ostomy device.

6 (b) The person requests to use the toilet facility during the retail
7 establishment's usual business hours.

8 (c) Three or more employees of the retail establishment are working at the
9 establishment at the time the person requests use of the toilet facility.

10 (d) The toilet facility is not located in an area where access creates an obvious
11 health or safety risk for the person or an obvious security risk for the retail
12 establishment.

13 (e) The retail establishment does not have a toilet facility that the public may
14 use.

15 (f) A public toilet facility is not immediately accessible to the person.

16 **(3) LIMITATION ON REQUIREMENT.** No retail establishment may, under this
17 section, be required to make physical changes to a toilet facility that is designated
18 for use by the establishment's employees.

19 **(4) ENTITIES THAT MAY ISSUE IDENTIFICATION CARDS.** The department shall
20 approve, to issue identification cards that may be used under sub. (2) (a) 2., entities
21 that provide services to, or advocate on behalf of, persons who suffer from an eligible
22 medical condition or use an ostomy device.

23 **(5) PENALTIES.** (a) Whoever violates sub. (2) may be required to forfeit not more
24 than \$200.

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1 (b) Whoever does any of the following with respect to a written statement or
2 identification card that is specified in sub. (2) (a) may be required to forfeit not more
3 than \$200:

4 1. Forges a statement or identification card, or utters a forged statement or
5 identification card.

6 2. Alters a statement or identification card, or utters an altered statement or
7 identification card.

8 3. Transfers to another person, for use by that person, a statement or
9 identification card intended for use by a different person.

10 4. Knowingly possesses a forged or altered statement or identification card.

11 (c) Each day of continued violation under par. (a) or (b) constitutes a separate
12 offense.

13 **SECTION 2.** 895.512 of the statutes is created to read:

14 **895.512 Civil liability exemption; access to toilet facility.** If an employee
15 of a retail establishment permits a person to use the establishment's toilet facility,
16 under the requirements of s. 146.29, the employee and the establishment are
17 immune from civil liability for the death of or injury to the person, or an individual
18 other than an employee who accompanies the person, that is caused by or during the
19 use of the facility, unless the death or injury was caused by a willful or wanton act
20 or omission of the employee.

21 (END)